

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JORDAN P. W., a juvenile,

Defendant-Appellant.

No. 05-30078

D.C. No. CR-04-00094-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Argued and Submitted December 5, 2005
Seattle, Washington

BEFORE: GOULD and BERZON, Circuit Judges, and SCHWARZER,** Senior
District Judge

Jordan P. W. (W.) appeals his adjudication of juvenile delinquency for
violation of 18 U.S.C. §§ 1153(a) and 2241(c). He contends that the district court

*This disposition is not appropriate for publication and may not be cited to or by
the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**The Honorable William W Schwarzer, Senior United States District Judge for
the Northern District of California, sitting by designation.

erred in denying his pretrial motion to suppress a statement. W. argues that his statement made during noncustodial post-polygraph questioning was involuntary because he did not specifically consent to such questioning. We review de novo a district court's decision whether to suppress evidence, *United States v. Chaudhry*, 424 F.3d 1051, 1052 (9th Cir. 2005), and whether a statement was voluntary, *United States v. Haswood*, 350 F.3d 1024, 1027 (9th Cir. 2003). Factual findings underlying its determination of voluntariness are reviewed for clear error. *Id.* at 1027.

W. contends that the consent he and his aunt gave to the polygraph examination did not extend to the post-polygraph questioning. Thus, he claims his post-polygraph statement was involuntary in violation of the Fourth Amendment. We reject W.'s argument that a polygraph examination constitutes a search or seizure subject to the Fourth Amendment and know of no authority supporting it.¹

Nor did the post-polygraph questioning violate W.'s Fifth Amendment due process rights. In *Wyrick v. Fields*, 459 U.S. 42, 47-48 (1982), the Supreme Court held that an individual, in providing informed consent to a polygraph examination,

¹ The only federal court to address whether a polygraph examination is a Fourth Amendment search has rejected W.'s position. *See Stehney v. Perry*, 907 F. Supp. 806, 822 (D.N.J. 1995) ("a polygraph does not constitute a search within the meaning of the Fourth Amendment"), *aff'd*, 101 F.3d 925 (3d Cir. 1996).

also consents to post-polygraph questioning. The Court rejected a per se rule requiring additional warnings prior to post-polygraph questioning. *Id.* at 48-49. Here W. and his aunt consented to the initial polygraph examination, and no evidence was offered of a significant change in the character of the post-polygraph questioning; it would have been unreasonable for W. and his aunt to assume that W. would not be informed of the polygraph readings and asked to explain any unfavorable result. *See id.* at 47. Finding no Fifth Amendment violation in the admission of W.'s statement, we AFFIRM.

AFFIRMED.